

## **Regulatory Framework:**

The Javits-Wagner-O'Day Act (41 U.S.C. 8501, et. seq.), establishes the Committee for Purchase From People Who Are Blind or Severely Disabled as the independent Federal agency directed to manage a Procurement List for products and services for purchase by Federal customers. The statute and mission of the agency is to create employment for people who are blind or who have other significant disabilities. Compliance with the statute is critical to achieving this employment objective.

Only purchases made from the Federal Prison Industries have first priority before AbilityOne products as a mandatory supply source for Federal users. A commitment to educate, enforce procurement laws, and implement system enhancements to block the sale of these products is imperative. The continued support from senior Federal officials and the general workforce is critical to accomplish this goal. Successful execution and long term viability of AbilityOne products will create employment for this special segment of the disability labor pool and fulfill the intent of this Congressional mandate.

## **Background:**

The mandatory source requirement of the Javits-Wagner-O'Day Act may be overlooked by some Government organizations. As recently as July 2011, an Employment Growth Subcommittee report [1] identified the need to reinforce the employment objective of the Program through the sale of AbilityOne products to the Federal customer. The loss of sales through purchases of items other than AbilityOne, referenced here as "Essentially the Same" (ETS)

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[1] Report of the Immediate Pay-Off Task Force: Working to Improve the Program's Mandatory Source Status to Maximize Employment Opportunities, 07/14/2011, James Kesteloot, Subcommittee Chair.

products reduces the number of jobs that can be offered through the AbilityOne Program.

Both NIB and NISH increased their monitoring of solicitations to ensure Federal agencies were soliciting and subsequently contracting for AbilityOne products. Below depicts the dollar values of sales that might have gone outside the AbilityOne Program without the efforts of NIB and NISH. Please note, however, that these purchases were successfully transitioned to an AbilityOne product purchase.

- FY11- \$6,500,000 worth of products were captured (\$6,200,000-NIB/ \$346,000- NISH)
- FY12 (YTD)- \$578,000 worth of products were captured (\$386,000-NIB/ \$192,000-NISH)

### **The Current Plan:**

The Task Force established an action plan to mitigate potential job losses through a focused effort to eliminate ETS in all channels. Education and enforcement are the key tenets to this overall effort. The action plan is a four step approach which includes:

1. Foundation:

Gain the concurrence of senior leaders from GSA and other federal agencies to support this initiative. GSA committed to support by the formation of an Integrated Project Team (IPT) to develop recommendations.

2. Metrics:

Establish consolidated metrics among all channels to track ETS violations and monitoring.

**3. Compliance:**

Establish a formal program with policies and procedures for the monitoring, identifying, and communicating items that are ETS within the distribution channels.

**4. Education:**

Offer training to all distribution channel partners and federal contracting officers on the mandatory source requirements and ETS. Additionally, refresh current course materials offered by various agencies on the AbilityOne Program.

**Implementation and Solutions:**

- 1. Organizational Support: *Commitment*** from all federal agencies to support the AbilityOne mission and initiative to remove ETS through formal statements. Draft communication in process at the AbilityOne Program.
- 2. Ensure compliance throughout all Federal Agencies: *Enforce*** the Javits-Wagner-O'Day Act requirements as the required source for products. This statute must be treated with the same regard and respect as other procurement laws. Senior acquisition leaders must ensure the AbilityOne product is purchased foremost above any other commercial equivalent within their agency.
- 3. Ensure compliance within the GSA Multiple Award Schedule (MAS) Contracts: *Enforce*** the Javits-Wagner-O'Day Act requirements as the required source for products with the MAS holders. Through collaboration with the AbilityOne Program, GSA uses a third party data mining company to identify all ETS products marketed and bought. GSA then removes these products from MAS holder's contract.

4. **Ensure compliance within DoD E-mall:** *Enforce* the mandatory source requirements for products within DOD E-mall. DoD E-mall is analyzing possible system enhancements to block the upload of ETS products onto E-mall.
5. **Standardized Contract Language:** *Implement* standard AbilityOne language across all schedules and solicitations enforcing the mandatory source requirements for AbilityOne products.
6. **Compliance:** *Violations* on multiple occasions, despite the issuance of compliance policies and warnings, may result in suspension of an MAS holder's authorization for a period of time. After reinstatement, if compliance does not improve, or additional non-conformances are noted, the U.S. AbilityOne Commission will work—Government -to-Government—with GSA to determine appropriate penalties, including termination.
7. **Education:** *Launch* a training program as a two-step approach. First target GSA/DoD E-mall contracting officers and MAS holders to minimize ETS within the schedules program. Second, target key federal agencies to enforce the mandatory source requirements within their agency solicitations.

#### **Committee Member's Support:**

There are three simple steps that can dramatically decrease job loss due to the sale of ETS products. They include:

1. **Mandate semi-annual training** conducted by the AbilityOne Commission staff members in conjunction with NIB and NISH to all contracting officers and specialists on the mandatory source requirements of the AbilityOne Program.

- 2. Mandate annual training to senior procurement officials on the mandatory source requirements of the AbilityOne Program within your Federal agency.**
  
- 3. Direct and monitor the enforcement of the mandatory source requirements within your Federal agency in lieu of commercial equivalent products. Encourage purchases only from authorized AbilityOne sources, including Base Supply Centers.**